

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF IDAHO

IN RE)	
)	
JOHN EDWARD HOFFPAUIR,)	Case No. 99-01993
and DIAN LOUISE HOFFPAUIR,)	
)	MEMORANDUM OF DECISION
)	AND ORDER
Debtors.)	
)	
_____)	

HONORABLE TERRY L. MYERS, UNITED STATES BANKRUPTCY JUDGE

Randal J. French, BAUER & FRENCH, Boise, Idaho for Debtors.

Jed W. Manwaring, EVANS, KEANE, LLP, Boise, Idaho for chapter 7 Trustee.

Gary L. McClendon, Office of the United States Trustee, Boise, Idaho.

INTRODUCTION

Before the Court is a dispute between chapter 7 Debtors and their Trustee (who is assisted here by the U.S. Trustee) over the proper extent of exemptions which may be asserted in this bankruptcy case under applicable Idaho law. The complexity of the matter stems from an unfortunate event, the destruction of the Debtors' home and its contents in a post-petition fire. Though catastrophic, the loss was covered by insurance, and the parties' disagreements revolve around those insurance proceeds.

BACKGROUND

On August 5, 1999 John and Dian Hoffpauir ("Debtors") filed a chapter 7 petition, schedules and statement of financial affairs. On their original schedules A and D, Debtors listed a residence in Boise, Idaho with a market value of \$175,000.00 and which secured a claim in the amount of \$151,803.70.

The Debtors declared minimal tangible personal property. On their schedule B they listed household goods and furnishings with a total aggregate value of \$2,905.00. This category and amount included a computer valued at \$500.00. Schedule B also listed books worth \$300.00; portraits, photo albums and wall pictures of \$85.00; wearing apparel worth \$1,000.00; watches and jewelry worth \$500.00; \$55.00 of recreational or sporting goods; and two vehicles worth \$1,000.00 and \$3,800.00 respectively. The bulk of the value of their estate, exclusive of their residence, was in retirement assets of \$55,000.00.

On their first schedule C, Debtors claimed a \$50,000.00 homestead exemption in the residence under Idaho Code § 55-1003, and exemption for the full amount of their retirement assets under § 11-605(1)(e). They also claimed a \$2,905.00 exemption in household goods (including the computer) under Idaho Code § 11-605(1)(a); exemptions for the balance of the tangible personal property mentioned above under § 11-605(1)(a), (1)(b), (1)(c), or 11-605(2); and the vehicles fully exempt by combining the exemptions available under § 11-605(3) with an \$800.00 exemption under § 11-605(10).

As noted, a computer was disclosed as a household good, and claimed

exempt as such. No separate disclosure of computer equipment was made on schedule B under the category of office equipment, and no exemption was asserted for “tools of the trade” under § 11-605(3).

No timely objection was raised to these claimed exemptions.

On November 18, 1999, fire caused significant damage to the residence and destroyed the Debtors’ personal property contained in the house. The Debtors made a claim under their homeowners’ insurance policy with Farmer’s Insurance Group. This policy provided for “replacement cost” contents coverage.

The Debtors generated a spreadsheet-type document bearing a date of 11/24/99, which listed on a room-by-room basis all personal property which had been contained in the house. See, Exhibit 1. This listing included the date of acquisition or purchase of each item and its asserted original cost or, in some cases, a projected replacement cost. Exhibit 1 bears a total of \$108,239.54.¹ No testimony was provided regarding this document, and it therefore can be taken at this stage only at face value.

This document and the claims asserted by the Debtors against their insurance carrier concerned the Trustee, and for good cause. Exhibit 1 discloses significantly more property than the minimal assets which the Debtors under penalty of perjury

¹ This document is apparently designed for purposes of asserting the insurance claim. In addition to the destroyed assets, the total of \$108,239.54 also includes expenses related to the fire which the Debtors seek to have reimbursed, such as \$4,770.00 for six months’ apartment rent, \$767.40 for six months’ storage facility rent, \$1,600.00 for artwork repair, and various other expenses, including even \$50.00 for “dog grooming.”

declared at the time of filing on August 5, 1999. Even adjusting for the natural span between fair market value of used property and the cost of replacing such property, several aspects of Exhibit 1 are troubling.

The document itself is over 80 pages in length, while the itemization of household effects attached to the original schedule B is 2 pages. Exhibit 1 showed several items of significant value, acquired within 2 years of filing and, in some instances as late as January 1999, but those assets are either omitted from schedule B or ascribed a quite dissimilar value. For example:

<u>EXHIBIT 1</u>	<u>SCHEDULE B</u>
Dining room table, 10 chairs (\$3,100)	None listed
Karastan 8'6" x 10'6" rug (\$1,800)	None listed
Leather chair, sofa, ottoman (\$2,847)	Recliner (\$35), loveseat (\$25) living room chair (\$35)
(2) Hummel figurines (\$1,200)	(7) figurines (\$50)
(7) Hummel figurines (\$4,200)	
Tall boy chest (\$2,500)	(3) dressers (\$100)
Cherry hutch, buffet (\$2,500)	(1) buffet, "built in" (No value indicated); no hutch listed
Refrigerator (\$1,100)	None listed
(4) Oriental runners (\$1,969)	(4) rugs (\$100)

Additionally, Exhibit 1 listed far more in the way of art work, tools, general furnishings, and miscellaneous personal property than schedule B.

Soon after the fire, on December 10, 1999, the Debtors amended their schedules B and C. Amended schedule B increased the value of the household goods under item B.4 to \$108,000.00 stating "see attached list, and insurance proceeds." No list was attached, though it would be reasonable to assume that the Debtors were referring to their spreadsheet which ultimately became Exhibit 1, as the

figure of \$108,000.00 is the same. Debtors also included a new entry on schedule B, under item B.26, listing a computer, printer and scanner as "office equipment, furnishings and supplies," with an alleged value of \$4,000.00.

The December 10 amended schedule C claimed a \$10,000.00 exemption in household goods and furnishings, and a \$3,000.00 exemption in the \$4,000.00 computer, printer and scanner. The balance of the tangible personal property exemptions remained the same as originally asserted, despite the fact that it would appear that most if not all this property was destroyed in the fire.

On January 12, 2000, the Debtors once again amended their schedules B and C. Schedule B now listed under item B.4 insurance proceeds of \$103,000.00 and \$125.00 in dishes, cups, glasses, pots, pans and cooking utensils. No household goods are otherwise itemized. The books, pictures, and so on are eliminated from schedule B. The wearing apparel is reduced from \$1,000.00 to \$100.00. The jewelry remains the same, as does the listing for sporting goods. This amended schedule B also states under item B.26 "\$0" for the computer, printer and scanner, apparently to indicate these items no longer exist.

On this second amended schedule C, the Debtors claimed the exemptions which are put at issue by the Trustee's objection. They claimed a \$10,000.00 aggregate exemption under "§ 11-605" consisting of \$125.00 in the pots and pans, \$9,775.00 in insurance proceeds, and \$100.00 in wearing apparel. They claimed an additional \$800.00 in insurance proceeds under § 11-605(10). The Debtors also claimed a \$3,000.00 exemption in computer equipment, also pursuant to

“IC 11-605.”² Additionally, they claimed the jewelry of \$500.00 exempt without citation, though § 11-605(2) was cited in the original schedule C, and claimed the retirement assets exempt under § 41-1835.³

On January 25, 2000, the Trustee timely objected to the Debtors’ amended claims of exemption in the insurance proceeds, household goods, apparel and computer. An objection was also raised to the homestead exemption, as it related to the insurance proceeds. No objections were raised to any of the other asserted exemptions. The matter came on for hearing pursuant to notice on April 18, 2000.

At that hearing, the parties stipulated to delay resolution of the objection to Debtors’ homestead exemption until all the outstanding issues under the homeowner’s policy had been resolved. Accordingly, the Court is asked at this time to rule only upon the objections to the amended exemptions which the Debtors claim on this personal property and/or on the insurance proceeds attributable to that property.

² The Debtors’ written “Response” and “Additional Response” to the Trustee’s objection, apparently in recognition of the fact that the cited authority was insufficient under L.B.R. 4003.1, asks the Court to “deem” the household goods/proceeds to be claimed exempt under § 11-605(1)(a) and (b) and the computer equipment/proceeds claimed under § 11-605(3). It is in these pleadings that the Debtors first allege the applicability of § 11-606.

³ It appears the exemptions of jewelry and vehicles have never been contested by the Trustee. Nor has the exemption of retirement assets, whether asserted under § 11-605(1)(e), as originally occurred, or under § 41-1835 in the amendments. Thus, these exemptions are allowed. *Taylor v. Freeland & Kronz*, 503 U.S. 638, 643-44, 112 S.Ct. 1644, 1648-49 (1992).

DISCUSSION

The Court has evaluated in depth the legal issues argued by the parties, most significantly the questions of construction of Idaho Code § 11-606. However, that effort and the related review and analysis of the record leads the Court to conclude that before reaching the issues under § 11-606, an evidentiary hearing is necessary in order to determine whether the Debtors should be allowed to amend their exemptions.

Fed.R.Bankr.P. 1009(a) makes it clear that a schedule claiming exemptions may be amended at any time before the closing of the case. *Martinson v. Michael (In re Michael)*, 163 F.3d 526, 529 (9th Cir. 1998); *In re Welker*, 99.4 I.B.C.R. 161 (Bankr. D. Idaho 1999); *In re O'Brien*, 97.3 I.B.C.R. 93 (Bankr. D. Idaho 1997). While amendment is liberally allowed, the right to amend is not without limits. A court may deny a debtor leave to amend upon a showing of a debtor's bad faith or of prejudice to creditors. *Michael*, 163 F.3d at 529; *Magallanes v. Williams (In re Magallanes)*, 96 B.R. 253, 256 (9th Cir. BAP 1988); *O'Brien*, 97.3 I.B.C.R. at 93; *In re Cooper*, 86 I.B.C.R. 151, 153 (Bankr. D. Idaho 1986). Bad faith must be established by clear and convincing evidence. *Michael*, 163 F.3d at 529; *Magallanes*, 96 B.R. at 256.

In addition to the foregoing authorities, *Payne v. Wood*, 775 F.2d 202 (7th Cir. 1985) is also worthy of note. Debtors there initially scheduled some \$1,200.00 in assets but later claimed almost \$18,000.00 when seeking to recover on insurance for a fire loss. The Court made several salient observations in its discussion of this facially similar situation. Whether *Payne* is relevant beyond these observations

depends upon the evidentiary record established.

In light of the discrepancies between the Debtors' original schedules and Exhibit 1, a *prima facie* issue is presented. However, the present record is not adequate to allow the Court to resolve it. Allowing the amendment is a threshold issue, and must be resolved before considering the Trustee's objections to those amended exemptions.

CONCLUSION

For the reasons stated, the Court determines that an evidentiary hearing shall be held to establish a record upon which the question of allowance of amendment of exemptions can be determined. Once that decision is reached, the Court will, if necessary, address the specific contentions of the parties under the Idaho exemption statutes.⁴

It is therefore ORDERED, and NOTICE is hereby given that the Court will hold a hearing on July 19, 2000, at 1:30 p.m. at the United States Bankruptcy Court for the District of Idaho, Fifth Floor, 550 W. Fort Street, Boise, Idaho on the described

⁴ The Court has in its review discovered one other matter which also requires development of an evidentiary record. This concerns Debtors' exemption claimed in the insurance proceeds for the computer equipment as a "tool of the trade." In briefing, the Debtors assert that Mrs. Hoffpauir uses the computer equipment at home to write grant proposals for her employer, and that Mr. Hoffpauir uses this same computer equipment for "contract and volunteer work." No evidence was submitted on this question by either party at hearing. The Court concludes that, in the event the amendments are allowed, it will not have an adequate record upon which to resolve the issue. In order to avoid the need for yet another hearing, the Debtors shall be prepared at the July 19 hearing to substantiate the factual basis for that claim, and the Trustee shall be prepared to cross-examine and/or present evidence regarding this issue.

matters.

Dated this 21st day of June, 2000.